United Nations CED/C/AUT/Q/1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
16 October 2017

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Austria under article 29 (1) of the Convention*

I. General information

1. Please provide information about the process of preparing the report, including consultations that might have taken place with different organs of the State party, civil society actors and other relevant stakeholders.

2. Please provide information about the status of the Convention vis-à-vis national law and indicate whether its provisions can be directly invoked before and applied by courts or other relevant authorities.

3. Please provide information on the activities carried out by the Austrian Ombudsman Board in relation to the Convention and any additional measures taken by the State party for the Ombudsman Board to be in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

II. Definition and criminalization of enforced disappearance (arts. 1-7)

4. With regards to paragraph 20 of the State party's report, please indicate whether there exists in national law an express prohibition on invoking a state of necessity or any public emergency to justify any violation of, or restrictions on, human rights and freedoms. Please also indicate whether any legislation and/or practices concerning terrorism, national security or other grounds that the State party may have adopted have had any impact on the effective implementation of the Convention, in particular the prohibitions stemming from articles 1 and 16.

5. Please explain how a political organization, as referred to in the current definition of enforced disappearances in section 312b of the Criminal Code, would satisfy the definition of persons or groups of persons acting with the authorization, support or acquiescence of the State, in accordance with article 2 of the Convention. Please (a) explain whether section 312b is compatible with article 2 of the Convention given the omission of the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person and (b) clarify whether the State party's interpretation of section 312b is that placing a person outside the protection of the law is a consequence of the offence of enforced disappearance and not a constitutive element of it (art. 2).

* Adopted by the Committee at its thirteenth session (4-15 September 2017).

GE.17-18103(E)

1718103

Please recycle

6. In relation to paragraphs 41 and 43 of the report, please explain what constitutes contributing to an offence of enforced disappearance, and how the acts of endorsement and psychological support are interpreted in relation to section 12 of the Criminal Code. In relation to paragraph 45 of the report, please provide examples, if available, of instances in which such provisions have been invoked and/or applied. Please also describe the legal recourse available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal act ordered by a superior, as mentioned in paragraph 45 of the report (art. 6).

7. Please explain how the current level of punishment in the Criminal Code is the appropriate penalty for an offence of enforced disappearance, taking into account its extreme seriousness. With reference to paragraphs 39 and 47 of the report, please clarify whether the penalty for the offence of enforced disappearance as a crime against humanity is life imprisonment in cases that result in the intentional, as opposed to the negligent, death of the disappeared person (art. 7).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

8. With reference to paragraph 51 of the report, please provide detailed information on the criteria and standards used to determine when the offence of enforced disappearance has ceased and thus the term of limitation may commence. Please explain how the current term of limitation is of long duration and is proportionate to the extreme seriousness of the offence as set out in article 8 (1) (a) of the Convention (art. 8).

9. With reference to section 64 (4c) (b) of the Criminal Code, please specify which other interests would trigger the State party to provide for jurisdiction in cases of enforced disappearance. With reference to paragraph 64 of the report, please provide detailed information on the mechanisms for implementing article 10 (2) of the Convention, in relation to notifying the States parties referred to in article 9 (1) when a person of their nationality has been detained, including the circumstances warranting detention, the findings of a preliminary inquiry or investigation, and whether the State party intends to exercise its jurisdiction in appropriate cases. Please clarify whether the reciprocity requirement in the law on mutual assistance could prevent the State party from fully implementing article 10 of the Convention (arts. 9 and 10).

10. Please indicate whether, pursuant to national law, military authorities are competent to investigate and prosecute persons accused of enforced disappearance (art. 11).

11. In relation to paragraphs 31 and 72 of the report, please provide additional information on all the measures in place to ensure prompt, effective and impartial investigation of alleged cases of enforced disappearances (art. 12).

12. Please indicate whether, in addition to the protection of witnesses referred to in paragraph 70 of the report, mechanisms exist for the protection of complainants, the relatives of disappeared persons, their defence counsel and other persons participating in the investigation of a case of enforced disappearance against any kind of ill-treatment or intimidation. Please also indicate whether (a) during an investigation into a reported case of enforced disappearance, national law provides for the immediate suspension from duties of an alleged offender if he or she is a State agent and (b) there are any procedural mechanisms to exclude any civil or military law enforcement or security force from investigating an allegation of enforced disappearance in the event that one or more of its members are suspected of having committed the crime. If so, please include information about the implementation in practice of the relevant provisions (arts. 12).

13. Please indicate whether any limitations or conditions in national law could be applied in relation to requests for judicial assistance or cooperation in the terms set out in articles 14 and 15 of the Convention (arts. 14 and 15).

IV. Measures to prevent enforced disappearances (arts. 16-23)

14. With reference to the amendment to the Asylum Act passed in 2015 granting the Government of the State party the power to declare a state of emergency in the event of a mass influx of asylum seekers, please (a) provide information about the mechanisms and criteria applied in the context of procedures concerning expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance, especially at the border where police officials determine admissibility, (b) indicate whether it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, please indicate before which authorities, what the applicable procedures are, and whether they have suspensive effect, and (c) state whether the procedure, including the fast-track admissibility procedure under the recent amendment to the Asylum Act, provides the necessary guarantees to ensure strict compliance with the principle of non-refoulement under article 16 (1) of the Convention. Please specify what training is provided to border police on their responsibilities under the fast-track admissibility procedure (art. 16).

15. Please indicate whether there are any States that are considered safe in relation to procedures in cases of expulsion, return, surrender or extradition of persons. If so, please indicate on the basis of which criteria a State is considered safe, how often these criteria are reviewed and whether, before proceeding to the expulsion, return, surrender or extradition of a person to a State considered safe, a thorough individual assessment is made of whether the person concerned is at risk of being subjected to enforced disappearance (art. 16).

16. With reference to paragraph 89 of the report, please confirm whether all persons taken into custody have access to legal counsel, including free legal aid in case of need, from the very outset of deprivation of liberty (art. 17).

17. In connection with paragraphs 92 and 93 of the report, please indicate whether the electronically managed Integrated Administration of the Penitentiary System and the police database for persons in detention contain all the information mentioned in article 17 (3) of the Convention, and how often they are updated with new information. In addition, please indicate whether there have been any complaints concerning delays or failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of their liberty and, if so, please provide information on the proceedings initiated and, if relevant, the sanctions imposed and the measures taken to ensure that such omissions are not repeated (arts. 17 and 22).

18. Please indicate whether in the national law applicable to detention of suspected terrorists, and in practice, the guarantees provided for in articles 17 (2) and 18 of the Convention are respected (arts. 17 and 18).

19. Please indicate whether the Ombudsman Board possesses sufficient financial, human and technical resources to enable it to carry out its functions, including as the national preventive mechanism, effectively and independently. Please provide information on any change to the budget allocated to the Ombudsman Board during the reporting period and, if so, indicate which of its functions have been affected (art. 17).

20. With reference to paragraph 104 of the report, please clarify what information persons with a legitimate legal interest — who, however, are not legal representatives of disappeared persons — can obtain at the public prosecutor's office or at the court (art. 18).

21. Please indicate whether the State party provides, or envisages providing, specific training on the Convention, in the terms set forth in article 23 thereof, to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty as well as judges and prosecutors. In doing so, please also indicate the nature and frequency of the training provided and the authorities in charge of facilitating such training (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

22. With reference to paragraphs 129 and 130 of the State party's report, please explain how the definition of victim in national law would satisfy the wider definition of victim, as any individual who has suffered harm as the direct result of an enforced disappearance, in accordance with article 24 (1) of the Convention (art. 24).

23. Please indicate whether, in addition to compensation and a guarantee of non-repetition referred to in paragraphs 132, 133 and 134 of the report, national law provides for other forms of reparation in accordance with article 24 (5) of the Convention and whether there is a time limit for the provision of reparations to victims of enforced disappearance. Please provide information on the criteria used to determine whether dependent relatives suffer any harm and are thus eligible for compensation, in relation to the criteria used to recognize a person as a victim under section 65 (1) (a) and (c) of the Code of Criminal Procedure. In relation to paragraph 136 of the report, please provide the content of, and an update on, the draft bill to improve victims' rights (art. 24).

24. Please provide more information on the applicable law in relation to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in matters such as social welfare, financial matters, family law and property rights (art. 24).

25. With reference to paragraph 137 of the report, please indicate whether any steps have been taken to bring national legislation into line with article 25 (1) of the Convention. Please provide information on the relevant measures taken to search for and identify child victims of enforced disappearance, including DNA databases, and the procedures in place to return them to their families of origin. Please indicate which procedures are in place to guarantee the right of disappeared children to have their true identity re-established. Please specify the content of relevant provisions referred to in paragraph 140 of the report and also provide detailed information on current legal procedures for reviewing adoption, placement and guardianship arrangements resulting from an enforced disappearance. Please provide information on the procedures and criteria developed to determine the best interests of the child, especially those related to enforced disappearance (art. 25).